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Applicatur



**RACCA**

REGIONAL AIR CARGO CARRIERS ASSOCIATION

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10 May 2005

## **PETITION FOR EXEMPTION FROM A PROVISION OF 49 CFR 175.33**

### **Substance of Rule from which Exemption is Sought**

This petition requests relief from the requirements that information in the Notice to Pilot in Command (NOPIC) related to hazardous materials (HazMat) aboard an aircraft be available enroute and at the destination while the aircraft is in flight, when lack of communication facilities at the departure airport, the destination airport or both, make it impossible or impracticable to make that information available.

### **Nature and Extent of Relief Sought**

Regional Air Cargo Carriers Association, on behalf of its members, requests an exemption that will allow the pilot in command of an aircraft carrying hazardous materials to utilize a substitute means, set forth below, instead of meeting the strict requirement that HazMat information from the NOPIC be available at the departure airport, from a source not aboard the aircraft while it is enroute, and at the destination.

### **Interests of the Petitioner**

Regional Air Cargo Carriers Association (RACCA) represents carriers operating cargo flights under Part 135 of the Federal Aviation Regulations. These operations include charter flights, common carriage flights, and recurring flights operated on a contract basis for package-express consolidators such as FedEx, UPS, and DHL. The high-priority freight carried on these flights includes commercial inventory material, prescription medicines, replacement parts, priority documents, medical laboratory samples, short-half-life radiopharmaceuticals, and even, in some cases, organs for transplant. These services touch a large proportion of the citizenry, and it is clearly in the public interest that they operate expeditiously as long as an appropriate level of safety can be maintained.

### Justification for a Grant of this Petition

Our members' flights, which may involve the transport of HazMat, serve a number of small, rural airports where there are no communications facilities which permit passing NOPIC data to the "person not aboard the aircraft from whom the information contained in the notification of pilot-in-command can be obtained" as required in §175.33.

Specifically, there is no land-line telephone at or proximate to the cargo loading area (in some cases there is a telephone, but it is ½ mile or more from the cargo ramp or in an office that is closed at the time the flight operates), there is no land line phone at all on the airport, cellular telephones do not work at the airport, and/or there is no practicable means of communicating the information by radio before takeoff. Passing the information shortly after takeoff is impractical because (a) the aircraft are flown by a single pilot, who cannot realistically read lists of HazMat data to a person on the ground while controlling the aircraft, often at night in instrument meteorological conditions, and responding to Air Traffic Control (ATC) communications; and (b) often there is no suitable ground station with which to communicate; FAA ATC facilities are certainly not staffed or equipped to handle such data.

These services often operate at night, after normal business hours, on very tight schedules controlled by connections with consolidators' large jet freighters at hub airports. In many cases the cargo pilot, and the courier or package express driver that delivered the freight, are the only people at the small outlying airport when loading takes place. In a few situations, the freight is left in a lockbox or other storage area at the airport, and the pilot is the only person present when the cargo is loaded aboard the airplane.

Thus, it is clear that the requirements of §175.33 cannot be strictly complied with (or strict compliance would generate delays resulting in failure to connect with downstream flights) at some airports, and the carriers' only option is to refuse HazMat shipments at those locations – clearly not in the public interest.

It is important to understand that these carriers operate smaller aircraft: The Embraer Brasilia and Shorts SD-360 are at the upper end of the size spectrum for these operators, and their flying is often done in much smaller airplanes – extending down to small, single engine aircraft with only a few hundred pounds of payload. Of that payload, only a small proportion is HazMat, often further restricted by compatibility and distance-from-crew limits.

### Proposed Alternate Procedure in Lieu of Strict Compliance with §175.33

If the requirements to make information required to be retained in §175.33 available enroute and at the airport of arrival cannot be complied with due to lack of communication facilities, the pilot in command will –

1. Instruct a person on the ground at the departure airport to communicate required information from the NOPIC to the individual referred to in §175.33(a)(8) by telephone

or other means, as soon as practicable after aircraft loading is completed; or if that is not possible,

2. Leave a copy of that information bearing the date, estimated departure time, and flight number or aircraft registration number in a conspicuous location in or adjacent to the loading area at the departure airport.

### Conclusion

This petition, if granted, will make the information available to emergency responders or other personnel, either by contacting the person referred to in §175.33(a)(8), or by sending law enforcement or other personnel to the departure airport to recover the NOPIC data there. Considering the small quantities of HazMat carried aboard these flights, the basic risk is minimal – and by following the procedures outlined above we believe the intent of the rule is satisfied, our members will be able to provide services which are clearly in the public interest, the unique situation associated with the small rural airports they serve will be addressed, and an equivalent level of safety will be maintained.

We are eager to work with the Department of Transportation to adjust or refine this petition as may be necessary to meet our mutual objectives. Please feel free to call me at 818 847 0000 during Pacific Time business hours, or RACCA President Stan Bernstein at the number above.

Sincerely,

A handwritten signature in black ink, appearing to read 'John W. Hazlet, Jr.', with a stylized, cursive script.

John W. Hazlet, Jr.  
Chairman, RACCA Part 135 Committee